

318 CRA-S-840-SB-2005

GURVINDER SINGH VS STATE OF HARYANA

Present: None for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

There is no representation on behalf of the appellant.

In view of the above, Mr. T.P.S. Bawa, Advocate (Enrollment No.P/603/2019, Phone No.94642-34985) is appointed as Legal Aid Counsel in the present case, to assist this Court on behalf of the appellant.

Registry is directed to supply a copy of the complete paper book to him free of cost before lunch hours.

Matter be taken up post lunch.

(HARPREET SINGH BRAR)
JUDGE

06.03.2025
P.Bhatt

**CRA-S-840-SB-2005 (O&M)****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****318****CRA-S-840-SB-2005 (O&M)****Date of Decision: 06.03.2025****GURVINDER SINGH****...Appellant****Versus****STATE OF HARYANA****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. T.P.S. Bawa, Advocate as Legal Aid counsel
for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

*********Harpreet Singh Brar, J. (Oral)**

1. Present appeal has been preferred by the appellant against the judgment of conviction and order of sentence dated 15.04.2005 passed by learned Additional Sessions Judge (Special Court under the NDPS Act, 1985), Kurukshetra vide which the appellant has been convicted under Section 15 of NDPS Act and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for two and half months	Rs.2,500/-	Rigorous imprisonment for one month

2. Learned Legal Aid counsel for the appellant *inter alia* contends that the entire case of the prosecution rests upon the testimony of the official witnesses. Baldev Singh, who had joined as independent witness during the investigation was never examined by the prosecution rather Baldev Singh

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appeared as DW-1 as a defence witness and this fact alone completely suffocates the case of the prosecution. Further, there is non-compliance of the mandatory safeguards provided under the Act and there are several contradictions in the testimony of the officials. The alleged contraband recovered from the appellant does not fall within the ambit of the Act and minimum punishment is not provided for the offence for which the appellant had been convicted. Learned Legal Aid counsel further submits that the appellant has already undergone a period of 01 month and 09 days out of total sentence of two and half months imposed upon him.

3. Per contra, learned State counsel opposes the prayer of the appellant on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, the appellant does not deserve any leniency.

4. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted for being in possession of 2 ½ kg of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 01 month and 09 days out of total sentence of two and half months, in the instant case. Since there is no minimum punishment prescribed under Section 15 NDPS Act, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him.

5. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of

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sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

6. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

7. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the said judgment is based on correct appreciation of evidence available on record. Moreover, learned counsel for the appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

8. The FIR in the present case was lodged on 10.04.2004 and the appellant has been suffering the agony of trial since the last about 21 years. As



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per the custody certificate, the appellant has undergone total sentence of 01 month and 09 days out of rigorous sentence of two and half months awarded to him and he is not involved in any other case as per the custody certificate.

9. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him especially when minimum punishment is not provided for the alleged offence.

10. Consequently, the present petition is disposed of in the following terms:-

(i) The judgment of conviction dated 15.04.2005 passed by the learned Additional Sessions Judge (Special Court under the NDPS Act, 1985), Kurukshetra is upheld, however, the order of sentence dated 15.04.2005 is modified to the extent that the sentence of rigorous imprisonment for two and half months awarded to the appellant along with payment of fine is reduced to the period of sentence already undergone by him.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. Remuneration to learned Legal Aid counsel be paid as per rules.

(HARPREET SINGH BRAR)
JUDGE

06.03.2025

P.Bhatt

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>